

REMARKS

Claims 1-14 are pending in the present application. The Office Action and cited references have been considered. Favorable reconsideration is respectfully requested.

Claims 1-14 were rejected under 35 U.S.C. §103 as being unpatentable over Lancie (U.S. Patent No. 3,161,102) in view of Kelischek (U.S. Patent No. 3,308,707). This rejection is respectfully traversed for the following reasons.

Claim 1 recites an oboe comprising an elongate body in two portions configured to be nested one in the other, a first portion (10) carrying at one end (10a) a onion (11) configured to receive a reed, and a second portion (20) configured to be nested with a horn (30). A plane of transverse nesting of the two portions of the body is situated between octave holes (13) and note holes, there being note holes only in the second portion (20) and the horn (30) and there being octave holes only in the first portion (10). This is not taught, disclosed or made obvious by the prior art of record.

Lancie discloses an oboe of the type made for many years, comprising two body portions L and U nested one in the other, each portion L and U comprising note holes 11, 11'. As admitted by the Examiner, in Lancie, the plane of transverse nesting is not situated so that note holes only are in the second portion L. Applicant also submits that Lancie does not teach that there are octave holes only in the first portion.

The oboe as claimed would not have been obvious over Lancie in view of the teachings of Kelischek for the following reasons. First, Kelischek does not concern an oboe but discloses a krummhorn. A krummhorn does not comprise an onion which receives a reed. In a krummhorn, the reed is placed inside the top body of the instrument (see the reed 58 inside the

body 54 in figure 2). Moreover, in a krummhorn, the majority of note holes are closed directly by the fingers (see column 3, lines 53 – 60) and not by means of keys, as in an oboe. Thus, separating the body of an oboe into three parts, as opposed to two, with its keys for covering the various holes is a more difficult task than separating the body of a krummhorn, which contains only one key.

The Examiner responded that “Kelischek was relied on to teach [the limitation of note holes to be only in the second portion and the instrument”] since it represents a woodwind instrument which is similar to an oboe.” While it is similar to the oboe in that it uses a double reed, it is a very different instrument in that there is only one key; the rest of the fingerings are provided only by holes. Thus, one of ordinary skill in the art would not have been motivated, absent impermissible hindsight reasoning, to look to the krummhorn’s construction to solve problems encountered when fitting together various parts of an oboe, with its many keys and corresponding holes.

The Action also asserts that the oboe is typically separated into three parts for storage and travel and that Kelischek “merely teaches repositioning the plane of transverse nesting of two portions so that the tone holes would be located only in a second portion.” However, as presently amended, claim 1 recites that note holes are located only in the second portion and octave holes only are located in the first portion. Kelischek has no holes in the “first portion”, *i.e.*, the reed-cap base 54. Thus, there is no teaching in the prior art, whether taken alone or in combination, that would have taught one of ordinary skill in the art to make Applicant’s invention, or would have motivated one of ordinary skill to combine the teachings of

the references to yield Applicant's invention, absent the impermissible use of hindsight reasoning.

The present inventive construction provides advantages not found in the prior art. In particular, according to the present invention, the new position of the plane of transverse nesting facilitates the fitting of the top body and a bottom body, since there are fewer keys and links that project beyond each body at the nesting plane. Moreover, since all note holes are positioned in the same body, the positioning of the notes along the body is easier and is not prevented by the presence of fixing means. In particular, this positioning makes it possible to move closer together certain notes that are traditionally far apart because of the presence of the necessary fixing means between the two body portions of a traditional oboe. Paragraph bridging pages 2-3 of the present application.

Moreover, the oboe and krummhorn are both very old instruments and have existed in their current configuration for several hundred years without change. This is strong evidence to one of ordinary skill in the art would not have found it obvious to modify the body of an oboe, even when considering the teachings of Kelischek, which issued over 40 years ago, with respect to construction of the krummhorn. The Examiner did not find this evidence very persuasive. However, it cannot be ignored. Long felt but unsolved need is a secondary consideration indicative of non-obviousness that must be considered when determining whether one of ordinary skill in the art would have found the invention obvious. In this case, in a traditional oboe, the top body includes the octave holes, the trill holes and the note holes between C sharp and G sharp. The bottom body includes note holes between G and C, while the horn includes the B natural hole and a hole for modifying the resonance of the horn. The low B flat is obtained by

closing B natural with all notes blocked. This type of wind instrument is still traditionally made of wood, generally of ebony, for the qualities of sound it procures. However, an instrument of this kind is very fragile, and it is not rare for the body of the oboe, and more particularly the top body of the oboe, to split through contact with moisture present in the breath of the player and in the event of thermal shock. Moreover, fitting the top body and the bottom body together is not always facilitated by the presence of keys and links that project beyond each body. These problems have existed for many years, and have heretofore gone unsolved. The present claimed invention solves these problems found in the prior art by providing an oboe that is more ergonomic for the player to assemble and play.

Furthermore, even if one of ordinary skill in the art would have considered the teachings of Kelischek instructive to modify Lancie, the resulting modification would not have been the claimed invention. Indeed, when considering Kelischek, the plane of transverse nesting is positioned between the top body 54 and the bottom body 18, so that no holes are provided in the top body 54 which encloses the reed. Consequently, should one of ordinary skill in the art consider the teachings of Kelischek for modifying an oboe body of the type taught in Lancie, he would have been instructed to provide the plane of transverse nesting not between the octave holes and note holes, but just near the onion receiving the reed. Thus, the claimed invention recited in claim would not have resulted from the modification of Lancie.

For at least these reasons, Applicant respectfully submits that claim1 is patentable over the prior art of record whether taken alone or in combination as proposed in the Office Action. Claims 2-14 depend from and include the limitations of claim 1. Applicant respectfully

submits that claims 2-14 are patentable in and of themselves, and for the reasons discussed above with respect to claim 1.

In view of the above amendment and remarks, Applicant respectfully requests entry of the proposed amendment and reconsideration and withdrawal of the outstanding rejections of record. Applicant submits that upon entry of the amendment, the application is in condition for allowance and early notice to this effect is most earnestly solicited.

If the Examiner has any questions, he is invited to contact the undersigned at 202-628-5197.

Respectfully submitted,

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